



**FROM THE COMMITTEE
ON MODEL CRIMINAL
JURY INSTRUCTIONS**

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The Committee solicits comment on the following proposal by January 1, 2018. Comments may be sent in writing to Samuel R. Smith, Reporter, Committee on Model Criminal Jury Instructions, Michigan Hall of Justice, P.O. Box 30052, Lansing, MI 48909-7604, or electronically to MCrimJI@courts.mi.gov.

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PROPOSED

The Committee proposes amending the resisting arrest instructions, M Crim JI 13.1, 13.2, and 13.5, to accommodate changes in the law announced in *People v Moreno*, 491 Mich 38 (2012), *People v Quinn*, 305 Mich App 484 (2014), and *People v Vanderberg*, 307 Mich App 57 (2014), regarding resistance to unlawful police conduct, and to improve the instructions' readability. Deletions from the current instructions are struck-through; additional language is underlined.

**[AMENDED] M Crim JI 13.1 Assaulting, Resisting, or Obstructing
a Police Officer or Person Performing Duties**

(1) The defendant is charged with the crime of {assaulting, ~~+~~ battering, ~~+~~ wounding, ~~+~~ resisting, ~~+~~ obstructing, ~~+~~ opposing, or ~~+~~ endangering}¹ a [police officer / (state authorized person)]² who was performing [his / her] duties.⁺ To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt: To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant {assaulted, ~~+~~ battered, ~~+~~ wounded, ~~+~~ resisted, ~~+~~ obstructed, ~~+~~ opposed, or ~~+~~ endangered},¹ [name complainant], who was a [police officer / (state authorized person)].² ["Obstruct" includes the use or threatened use of physical interference or force or a knowing failure to comply with a lawful command.]²³ [The defendant must have actually resisted by what (he / she) said or did, but physical violence is not necessary.]³

(3) Second, that the defendant knew or had reason to know that ~~the person~~
~~the defendant~~ {~~assaulted~~ / ~~battered~~ / ~~wounded~~ / ~~resisted~~ / ~~obstructed~~ /

~~opposed / endangered~~] [name complainant] was a [police officer / (state authorized person)] performing [his / her] duties at the time.

(4) Third, that [name complainant] gave the defendant a lawful command, was making a lawful arrest, or was otherwise performing a lawful act.⁴

[Use the following paragraphs as warranted by the charge and proofs.]

(4 5) ~~Third~~ Fourth, that the defendant's act in such {assaulting, / battering, / wounding, / resisting, / obstructing, / opposing, or / endangering}¹ caused the death of ~~the officer~~ [name complainant].

(5 6) ~~Third~~ Fourth, that ~~such~~ the defendant's act in {assaulting, / battering, / wounding, / resisting, / obstructing, / opposing, or / endangering}¹ caused serious impairment of a body function ~~the officer~~ [name complainant].³⁵

(6 7) ~~Third~~ Fourth, that ~~such~~ the defendant's act in {assaulting, / battering, / wounding, / resisting, / obstructing, / opposing, or / endangering}¹ caused a bodily injury requiring medical attention or medical care to ~~the officer~~ [name complainant].

Use Note

⁺ This instruction is to be used when the defendant is charged with violating MCL 750.81d. A defendant could be charged with assaulting or obstructing an officer performing duties under MCL 750.479. In that case, see M Crim JI 13.2.

1. MCL 750.81d prohibits “assaulting, battering, wounding, resisting, obstructing, opposing, or endangering” certain officers or officials. The court may read all of that phrase or may read whatever portions it finds appropriate according to the charge and the evidence.

²2. “Person” for purposes of this statute is defined to include police officers, deputy sheriffs, firefighters, and emergency medical service personnel, among others. MCL 750.81d(7)(b).

3. The court may include this sentence where necessary.

4. The court should provide detailed legal instructions regarding the applicable law governing the officer's legal authority to act.

5. MCL 750.479(8)(b) defines “Serious impairment of a body function”

according to MCL 257.58c in the Michigan vehicle code. See M Crim JI 15.12.

**[AMENDED] M Crim JI 13.2 Assaulting or Obstructing
Officer or Official Performing Duties**

(1) The defendant is charged with the crime of of {assaulting, / battering, / wounding, / resisting, / obstructing, / opposing, or / endangering}¹ a [*state authorized person*]² who was acting in the performance of [his / her] duties.⁴ To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant {assaulted, / battered, / wounded, / resisted, / obstructed, / opposed, or / endangered},¹ [*name complainant*], who was a [*state authorized person*]² ~~who was performing~~ [his / her] duties. [“Obstruct” includes the use or threatened use of physical interference or force or a knowing failure to comply with a lawful command.]³

(3) Second, that the defendant knew or had reason to know that ~~the person the defendant~~ {assaulted / battered / wounded / resisted / obstructed / opposed / endangered} [*name complainant*] was then a [*state authorized person*] performing [his / her] duties at the time.

(4) Third, that [*name complainant*] gave the defendant a lawful command, was making a lawful arrest, or was otherwise performing a lawful act.⁴

(5) ~~Third~~ Fourth, that the defendant’s actions were intended by the defendant, that is, not accidental.

[Use the following paragraphs when warranted by the charge and proofs:]

(~~5~~ 6) ~~Fourth~~ Fifth, that the defendant’s act in such {assaulting, / battering, / wounding, / resisting, / obstructing, / opposing, or / endangering}¹ caused the death of {~~*state authorized person*~~} [*name complainant*].

(~~6~~ 7) ~~Fourth~~ Fifth, that such the defendant’s act in such {assaulting, / battering, / wounding, / resisting, / obstructing, / opposing, or / endangering}¹ caused serious impairment of a body function⁴⁵ to {~~*state authorized person*~~} [*name complainant*].

(~~7~~ 8) ~~Fourth~~ Fifth, that such the defendant’s act in such {assaulting, / battering, / wounding, / resisting, / obstructing, / opposing, or / endangering}¹ caused a bodily injury requiring medical attention or medical care to {~~*state authorized person*~~} [*name complainant*].⁵⁶

Use Note

¹ This instruction should be used when the defendant is charged with violating MCL 750.479. A defendant could be charged under MCL 750.81d with assaulting, resisting, or obstructing an officer. In that event, see M Crim JI 13.1.

1. MCL 750.479 prohibits “assaulting, battering, wounding, resisting, obstructing, opposing, or endangering” certain officers or officials. The court may read all of that phrase or may read whatever portions it finds appropriate according to the charge and the evidence.

²2. The statute lists authorized persons as medical examiner, township treasurer, judge, magistrate, probation officer, parole officer, prosecutor, city attorney, court employee, court officer, or other officer or duly authorized person. MCL 750.479(1)(a).

³3. “Obstruct” is defined in MCL 750.479(8)(a), as amended in 2002.

⁴4. The court should provide detailed legal instructions regarding the applicable law governing the official’s legal authority to act.

⁵5. MCL 750.479(8)(b) defines “Serious impairment of a body function” according to MCL 257.58c in the Michigan vehicle code. See M Crim JI 15.12.

6. This aggravating circumstance could be the charged offense or a lesser offense, if warranted by the evidence.

[AMENDED] M Crim JI 13.5 Legal Duties

~~(1) An arrest is legal if it is:~~

~~[Choose one of the following (1) or (2):]~~

~~(2) Made by an officer relying on an arrest warrant for the defendant issued by a court.~~

~~(3) Made by an officer for a crime that [(he / she) reasonably believed] was committed in [his / her] presence, if it was made as soon as reasonably possible afterward.~~

~~(4) Made by an officer who had reasonable cause to believe that the crime of _____ was committed by the defendant. "Reasonable cause" means having enough information to lead an ordinarily careful person to believe that the defendant had committed the crime of _____.~~

~~(5) Made by an officer for [state other basis].~~

Use Note

~~This instruction should be used only when the legality of the arrest resisted is in dispute. The committee believes that the legality of the arrest is no longer an element of the offenses found at MCL 750.81d and MCL 750.479. However, the committee retained this instruction since it may prove useful in other circumstances. The trial court should select the appropriate paragraph and tailor paragraph (5), if used, for arrests in those special statutory circumstances not covered by the other paragraphs.~~

(1) An arrest is legal if it is [made by an officer relying on an arrest warrant for the defendant issued by a court. / made by an officer for a crime that (he / she) reasonably believed was committed in (his / her) presence, if it was made as soon as reasonably possible afterward. / made by an officer who had probable cause to believe that a crime was committed by the defendant. "Probable cause" means having enough information to lead an ordinarily careful person to believe that the defendant had committed a crime. / made by an officer for (state other basis).] It is not necessary for you to find the defendant guilty of that crime in order to find that the arrest is legal.

[In determining whether an officer had probable cause to believe that the defendant committed a crime, you should consider all information known to police officers or law enforcement personnel involved in this case. It is not necessary that the arresting officer had probable cause based on [his / her] own knowledge if law enforcement personnel collectively had probable cause to believe that a crime was committed by the defendant. You are only required to find that police had probable cause to find that the arrest is legal.]¹

(2) A [police officer / (state authorized person)] may [provide detailed legal instructions regarding the applicable law governing the officer's or official's legal authority to act].

(3) The prosecutor must prove beyond a reasonable doubt that the [arrest was legal / the (officer / (state authorized person) was acting within (his / her) legal authority]. It is up to you to determine whether the (officer / (state authorized person)'s actions were legal according to the law as I have just described it to you.

Use Note

In *People v Moreno*, 491 Mich 38, 814 NW2d 624 (2012), the Michigan Supreme Court held that a defendant may resist unlawful police conduct. *People v Quinn*, 305 Mich App 484, 491-492, 853 NW2d 383 (2014), and *People v Vandenberg*, 307 Mich App 57, 68-69, 859 NW2d (2014), state the legality of the arrest or the officer's conduct is an element of the offense. This instruction should be given where the illegality of the arrest or the officer's conduct is offered as a defense.

The court may also decide that the police conduct is illegal as a matter of law, treating the legality of the conduct like any other element where a defendant makes such a challenge in a motion to quash, to dismiss, or for a directed verdict. See *People v Moreno*, 491 Mich 38, 58, 814 NW2d 624 (2012).

1. This paragraph may be given where appropriate according to the evidence.